

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOHSIN KHAWAJA : CIVIL ACTION
: :
v. : :
: :
BAY MANAGEMENT GROUP, LLC, : :
et al. : NO. 22-182

MEMORANDUM

Bartle, J.

May 2, 2022

Plaintiff Mohsin Khawaja has brought this diversity action under Pennsylvania law for defamation and tortious interference with prospective contracts against defendants Bay Management Group, LLC; Bay Management Group, Philadelphia, LLC; and Dana Anderson.¹ He also asserts a third count styled as a claim for "Vicarious Liability/Respondeat Superior." Before the court is the motion of all defendants to dismiss Khawaja's complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief could be granted.

I

When considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), the court must accept as true all well-pleaded factual allegations in the complaint and draw

1. Khawaja also names as defendants "John Does 1-5," and "ABC Companies 1-5."

all reasonable inferences in the light most favorable to the plaintiff. See Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008); Umland v. PLANCO Fin. Servs., Inc., 542 F.3d 59, 64 (3d Cir. 2008).

Rule 8 requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As the Supreme Court has explained, a complaint need not include "detailed factual allegations," but it must state "more than labels and conclusions" and must provide factual allegations "enough to raise a right to belief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); see also Ashcroft v. Iqbal, 556 U.S. 662, 679-80 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged--but it has not 'shown'--'that the pleader is entitled to relief.'" Id. at 679 (citing Fed. R. Civ. P. 8(a)(2)).

II

The following facts are accepted as true for present purposes. Khawaja is a residential landlord. He is known by some as "Moe" or "Mo." He is a member of MBMK Property Holdings, LLC, which develops and purchases rental properties in

Philadelphia and Delaware Counties, in Pennsylvania. MBMK contracted with Bay Management to manage its properties. Defendant Dana Anderson is listed on Bay Management's website as "President of Our Pennsylvania Territory."

On December 17, 2020, Anderson on behalf of Bay Management sent the following notice to MBMK's tenants about Khawaja:

Please take this as your 10 day notice to quit the premises. It was brought to our attention this week that you are residing at [your rental property] illegally as a defected member of the ownership broke into the premises and gave you the keys. This person, who likely identified himself as Mo, has filed for bankruptcy and is being sued for millions of dollars for stealing and non-payment of debt. We manage this property . . . on behalf of MBMK Property Holdings. You must reach out to us immediately before we file for a squatter eviction and small claims court for residing there and not paying rent. We would be open to having you apply for the property and signing an actual lease if you are approved through our application process but we cannot allow you to live there without being under a written lease and payment coming to us.

Days later, Anderson sent the tenants a text message: "Moe is going to jail for a very long time for stealing money and owing casinos hundreds of thousands of dollars. We will be filing for eviction this week if you do not pay/show proof of payment."

Khawaja confronted Bay Management about these statements. In response, he received a call from Anderson in

which Anderson "acknowledged Plaintiff's communication and, in retaliation, threatened to, and presumably did, contact a lender of Plaintiff's entity and make additional false statements and allegations that Plaintiff is stealing rental income."

Khawaja alleges that he "has relied on word of mouth and referrals from current tenants to enter into contracts with prospective tenants." Accordingly, he maintains that the notices and text messages sent to his current tenants interfered with his ability to lease his properties to future tenants.

III

Defendant Bay Management Group, LLC first moves to dismiss Khawaja's complaint on the ground that it is not a proper defendant. It contends that when Anderson sent the notices and text messages, he was acting as an agent only for Bay Management Group Philadelphia, LLC, and not for Bay Management Group, LLC. It urges the court to review the notice of removal, which states that Anderson "has zero ownership interest . . . whatsoever" in Bay Management Group, LLC. However, with limited exceptions, "a district court ruling on a motion to dismiss may not consider matters extraneous to the pleadings." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). Defendant does not invoke any exception to this general rule. For present purposes, it is sufficient that Khawaja in his amended complaint has alleged

that Anderson sent the communications in question as an agent of Bay Management Group, LLC. Defendant Bay Management Group, LLC's motion to dismiss will be denied on this ground.

IV

Defendants next move to dismiss Khawaja's defamation claim. They attack Khawaja's pleadings on two fronts.

First, defendants argue that Khawaja has failed to plausibly allege that any recipients of its communications understood them to be defamatory. Under Pennsylvania law, a defamation plaintiff must prove the "understanding by the recipient of [a communication's] defamatory meaning." 42 Pa. Cons. Stat. § 8348(a). Defendants maintain that under Rule 8 Khawaja must plead "factual averments representing objective signs" that the recipients "understood any of the alleged statement to be defamatory." In weighing the pleading of this element of defamation under Pennsylvania law, courts have found that Rule 8 requires a plaintiff to "plead that a recipient . . . would understand the remarks . . . to be defamatory."

Vinco Ventures, Inc. v. Milam Knecht & Warner, LLP, Civ. A. No. 20-6577, 2021 WL 4399682, at *19 (E.D. Pa. Sept. 27, 2021).

Although Khawaja's complaint is not the paradigm of particularity, his allegations are sufficient to state plausibly that his tenants understood Anderson's notices and text messages to be defamatory. Anderson after all accuses Khawaja of

committing crimes and dishonest business practices. In addition, Khawaja has alleged that some recipients contacted him about the communications after having received them. Together, these allegations support a plausible inference that Khawaja's tenants understood the communications to be defamatory. Cf. id. Defendants have not cited any authority to suggest that Rule 8 requires anything more at the pleading stage.

Defendants also argue that Khawaja has failed to plead facts to support a plausible inference that he suffered an actual injury. A Pennsylvania defamation plaintiff who seeks general damages, that is, compensation for injury to reputational harm, must allege "that one's reputation was actually affected by the slander or that one suffered personal humiliation." Id.; see also Joseph v. Scranton Times L.P., 129 A.3d 404, 424 (Pa. 2015). Defendants contend that Khawaja's complaint does not set forth factual averments demonstrating that he suffered any reputational harm as a result of Anderson's communications. However, Khawaja has alleged that Anderson's statements have harmed his reputation. The allegations of reputational harm that survived the Rule 8 pleading standard in Vinco Ventures, which defendants cite, are no more precise than those Khawaja advances here. See 2021 WL 4399682, at *19.

On the other hand, the court will dismiss Khawaja's amended complaint to the extent he asserts a claim of defamation

pertaining to statements Anderson made to his lenders. Unlike Anderson's statements to his tenants, Khawaja did not include the content of Anderson's statement to his lender in his amended complaint. Thus, it is impossible for the court to discern whether Khawaja has advanced plausible allegations that satisfy the elements of a defamation claim under Pennsylvania law, such as whether the statement was of defamatory character, or whether the lender understood the statement's defamatory meaning. Cf. id.; see also 42 Pa. Cons. Stat. § 8343(a). Accordingly, the court will dismiss Khawaja's defamation claim to the extent it is based on comments Anderson made to Khawaja's lender.

The motion of defendants to dismiss Khawaja's claim of defamation will otherwise be denied.

V

Defendants also move to dismiss Khawaja's claim for tortious interference with prospective contracts on the ground that Khawaja has not sufficiently alleged the existence of a prospective contractual relationship. See Sandoz Inc. v. Lannett Co., 544 F. Supp. 3d 505, 511 (E.D. Pa. 2021) (citing Glenn v. Point Park Coll., 272 A.2d 895, 898 (Pa. 1971)). To survive a motion to dismiss, Khawaja must allege a "'reasonable probability' that a contract would have arisen absent the defendant's interference." Id. at 511-12 (quoting Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 471-72 (Pa. 1979)). To do

so, he must put forth "something more than a mere hope" of a future contractual relationship. Id. (quoting Thompson Coal, 412 A.2d at 471). He must also "base [his] claim . . . on something other than an existing or current relationship." Acumed LLC v. Advanced Surgical Servs., Inc., 561 F.3d 199, 213 (3d Cir. 2009) (citing Phillips v. Selig, 959 A.2d 420, 429 (Pa. Super. Ct. 2008)).

As to the existence of a prospective contractual relationship, Khawaja alleges only that he "has relied on word of mouth and referrals from current tenants to enter into contracts with prospective tenants." This allegation is insufficient to show a "reasonable probability" that he would have signed leases with prospective tenants absent Anderson's notices and text messages. See Sandoz, 544 F. Supp. 3d at 511. Accordingly, the court will grant defendants' motion to dismiss Khawaja's claim for tortious interference with prospective relationships.

VI

Defendants also move to dismiss Khawaja's third count, which is entitled "Vicarious Liability/Respondeat Superior." Indeed, "[t]here is no independent cause of action for respondeat superior or vicarious liability" under Pennsylvania law. E.g., Robinson v. Folino, Civ. A. No. 14-227, 2017 WL

956648, at *5 (W.D. Pa. Mar. 13, 2017). Thus, the court will dismiss this count as well.

VII

For the foregoing reasons, the court will grant in part and deny in part the motion of defendants to dismiss Khawaja's amended complaint.